

## **SYNOPSIS**

**PURCHASERS' USE TAX – BURDEN OF PROOF NOT MET** – Failure by the Petitioner to appear or otherwise prove that the assessment is incorrect and contrary to law, in whole or in part, as required by W. Va. Code § 11-10A-10(e), mandates that the same be upheld in toto.

## **FINAL DECISION**

The Auditing Division of the West Virginia State Tax Commissioner's Office conducted an audit of the books and records of the Petitioner. Thereafter, the Director of this Division of the Commissioner's Office issued a purchasers' use tax assessment against the Petitioner.

This assessment was for the period of January 1, 1998 through December 31, 2002, for tax, interest, through March 31, 2003, and additions to tax, for a total assessed liability.

Thereafter, by mail postmarked, May 20, 2003, the Petitioner timely filed with this tribunal, the West Virginia Office of Tax Appeals, a petition for reassessment.

A hearing on the petition was scheduled, and the Petitioner received notice of the hearing. After waiting for about fifteen (15) minutes after the scheduled starting time for the hearing, this tribunal noted that no one had appeared on behalf of the Petitioner when the hearing was convened. The hearing was held, however, without an appearance on behalf of the Petitioner, in accordance with the provisions of W. Va. Code § 11-10A-10(a).

## **FINDINGS OF FACT**

1. Because the tax auditor discovered that no purchasers' use tax returns were filed during the audit period and no tax receipts were available to determine said tax liability, the tax auditor had no recourse but to estimate same.

2. In its petition for reassessment Petitioner disagreed with the assessment arguing that all inventory is resale and all paper and office supplies local.

### **DISCUSSION**

The sole issue is whether the Petitioner has shown that the assessment is incorrect and contrary to law, in whole or in part, as required by W. Va. Code. § 11-10A-10(e).

In this case, Petitioner has produced no evidence that the assessment is not correct.

### **CONCLUSION(S) OF LAW**

Based upon all of the above it is **DETERMINED** that:

1. In a hearing before the West Virginia Office of Tax Appeals on a petition for reassessment, the burden of proof is upon the petitioner-taxpayer to show that the assessment is incorrect and contrary to law, in whole or in part. See W. Va. Code § 11-10A-10(e).
2. The Petitioner-taxpayer in this matter has failed to carry the burden of proof with respect to the issues raised.

### **DISPOSITION**

**WHEREFORE**, it is the **FINAL DECISION** of the **WEST VIRGINIA OFFICE OF TAX APPEALS** that the purchasers' use tax assessment issued against the Petitioner for the period of January 1, 1998 through December 31, 2002, for tax, interest, updated through August 15, 2003, and additions to tax, should be and is hereby **AFFIRMED**.